

THE COMMONWEALTH OF MASSACHUSETTS
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April 29, 1999
AO-99-08

David A. Tibbetts
Smith, Segel & Sowalsky
One Court Street
Boston, MA 02108

Re: Corporate Matching Funds Programs

Dear Mr. Tibbetts:

This letter is in response to your April 7, 1999 email requesting an advisory opinion regarding a corporate program that matches employee political contributions with corporate charitable donations.

You have stated that some corporations believe that there is value in having their employees become active in political campaigns. These corporations would like to encourage such activity, if it is possible to do so consistent with law. You are aware that a corporation may not require an employee to contribute to a particular candidate or candidates as a condition of employment. One program that such a corporation might establish is similar to a corporate charitable matching program. In such a program, the corporation would "match" an employee's political contribution with a donation to a charity of the employee's choice.

The specific example you provide is as follows: Employee Jones works for ABC Corporation, which has as a corporate policy a goal of encouraging employees to become involved in charitable and community endeavors. The corporation already matches charitable contributions made by its employees. To encourage activity in the political process, the corporation extends that policy to match employee political contributions with a donation to a charity. Employee Jones contributes a total of \$200 to different candidates for state office in 1998, and chooses the Cancer Society from a list of charities provided by the corporation, which "matches" Jones' political contributions and donates \$200 to the Cancer Society.

Question: May a corporation establish a program similar to many charitable giving programs, where it "matches" any political contributions that an employee makes with a corporate donation to a charity?

Answer: No.



Discussion: The campaign finance law, M.G.L. c. 55, provides that a business corporation¹, its officers or agents may not:

directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party." M.G.L. c. 55, s. 8 (Emphasis added).

Section 8, which provides for the largest fine of section of the campaign finance law,² articulates a broad and comprehensive prohibition against corporate involvement in the electoral process. This broad prohibition is consistent with fundamental principals of constitutional law. See Austin v. Michigan Chamber of Commerce, 108 L. Ed. 2nd 652 (1990) concluding that a Michigan law prohibiting corporate political contributions was supported by a compelling governmental interest in preventing corruption in connection with large aggregations of wealth that business corporations accumulate and that have little or no correlation to support for a corporation's political ideas.

By its terms, the statute's prohibition includes direct and "indirect" political contributions³, gifts, payments or expenditures made to candidates or political parties. In effect, the proposed matching program would operate, at least to some extent, as a subsidy for employee political contributions. For example, an employee who may have previously only contributed to a charitable organization may now decide to contribute to a candidate or a party knowing that the corporation will make the charitable donation in his or her name that he would otherwise have made. The proposed matching program action would, therefore, constitute an indirect gift, payment or expenditure (if not a direct contribution) to a candidate or political party.

We understand that corporations may have a genuine interest in supporting employee civic and political involvement. We also recognize, however, that some corporations might implement a matching program such as the one you have described because they know that most or all of their employees will contribute to certain candidates, e.g. candidates of one political party. Section 8's comprehensive prohibition against corporate political involvement ensures that a corporation's wealth, which bears no relation to voter support, will not be used to promote or oppose a candidate or political party.

In short, a corporation may not contribute "directly" to candidates even if the corporation contributes to all candidates seeking office in a primary or election. Similarly, a corporation may not contribute "indirectly" to candidates generally by encouraging its officers or employees through financial incentives such as a matching charitable donation. In either case, the corporation would be

¹ For the purposes of section 8, the term "business corporation" includes a professional corporation organized pursuant to M.G.L. c. 156B or an association supported with funds derived from business or professional corporations. See AO-95-24 and AO-97-21.

² Unlike any other provision of the campaign finance law, section 8 allows for imprisonment and fines of up to \$10,000 for individuals violating section 8 and up to \$50,000 for corporations violating its provisions.

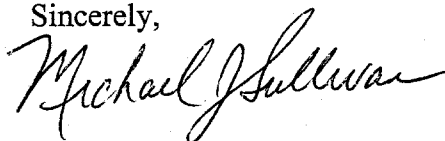
³ Even if the proposed donation does not constitute a contribution, as that term is defined by the campaign finance law, the matching charitable donation would be a gift, payment or expenditure made to provide an incentive for encouraging employees to contribute to candidates or parties.

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making a contribution that would "involve corporate expenditures specifically designed to influence the electoral process." First National Bank of Boston v. Bellotti, 371 Mass. 773, at 798 (1977), reversed on other grounds, 435 U.S. 765 (1978). See also Opinion of the Attorney General dated November 6, 1980.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your email. We appreciate your interest in the campaign finance law and encourage you to contact us if you have further questions regarding this opinion or any other campaign finance matter.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive, flowing style with a large initial "M".

Michael J. Sullivan
Director